

STATE OF COLORADO

EXECUTIVE CHAMBERS

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Bill Ritter Jr.
Governor

May 1, 2009

The Honorable Colorado Senate
Sixty-Seventh General Assembly
First Regular Session
State Capitol Building
Denver, CO 80203

Ladies and Gentlemen:

I am filing with the Colorado Senate the following act:

SENATE BILL 09-259 CONCERNING THE PROVISION FOR PAYMENT OF THE EXPENSES OF THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL DEPARTMENTS OF THE STATE OF COLORADO, AND OF ITS AGENCIES AND INSTITUTIONS, FOR AND DURING THE FISCAL YEAR BEGINNING JULY 1, 2009, EXCEPT AS OTHERWISE NOTED.

Approved in part and disapproved in part on May 1, 2009, at 11:17 A.M.

It is my constitutional obligation to review the general appropriations bill and exercise the line item veto when necessary. While I have approved Senate Bill 09-259 (the "FY 2009-10 Long Bill") as a whole, I have vetoed certain footnotes within the bill. Pursuant to the Colorado Constitution, I have filed copies of the vetoed items from this bill, with my objections, with the Colorado Senate.

I would like to thank the General Assembly for working with me to balance the Colorado's critical priorities during these difficult budgetary times. Due to projections of insufficient revenue, this budget reflects minimal increases to support case load increases and meet statutory and constitutional requirements.

VETO AND COMMENT ON FOOTNOTES

Article IV, Section 12 of the Colorado Constitution allows me to line item veto the general appropriations bill (the "Long Bill"). Although I have exercised this power to veto certain portions of the FY 2009-10 Long Bill that do not meet with my approval, for the second consecutive year, I have done so with respect to far fewer items than any Governor in recent history. I believe this is due in large part to the compromise over headnotes and footnotes that

was reached between the legislative and executive branches. This compromise culminated in House Bill 08-1321, which was signed into law on March 24, 2008. As a result of that bill, very few headnotes are included in the Long Bill. Instead, those substantive headnotes are in statute where they properly belong. Moreover, the bill contained much needed clarity with respect to what properly belongs in Long Bill footnotes. Specifically, the purposes of and limitations on Long Bill footnotes are as follows:

(a) When it is not feasible, due to the format of the annual general appropriation act, to set forth fully in the line item description the purpose of an item of appropriation or a condition or limitation on the item of appropriation, the footnotes at the end of each section of the annual general appropriations act are provisions that set forth such purposes, conditions or limitations. Such provisions are intended to be binding portions of the items of appropriation to which they relate to the extent that those purposes, conditions, or limitations are integral to the appropriation and are not, in accordance with the Colorado Supreme Court decision in *Colorado General Assembly v. Owens*, 136 P.3d 262 (Colo. 2006), conditions reserving to the General Assembly powers of close supervision over the appropriation.

(b) The footnotes may also contain an explanation of any assumptions used in determining a specific amount of an appropriation. However, such footnotes shall not contain any provision of substantive law or any provision requiring or requesting that any administrative action be taken in connection with any appropriation. Footnotes may set forth any other statement of explanation or expression of legislative intent relating to any appropriation.

C.R.S. § 24-75-112(2).

This shared understanding of the scope of and limitations on footnotes comports with the constitutional limitations on what provisions may be included in a general appropriations bill. For example, Article III provides separation of powers between the executive and legislative branches. While the legislative branch has the authority to appropriate state funds, the executive branch has the inherent responsibility and authority to administer state funds. Therefore, the legislature may not attach conditions in the Long Bill that intrude into the administration of state government. See *Colorado General Assembly v. Owens*, 136 P.3d 262, 266 (Colo. 2006) (holding that “the legislature ‘may not attach conditions to a general appropriation bill which purport to reserve to the legislature powers of close supervision that are essentially executive in character.’”); see also *Anderson v. Lamm*, 579 P.2d 620 (Colo. 1978); *Colorado General Assembly v. Lamm*, 704 P.2d 1371 (Colo. 1985) (hereinafter *Lamm II*). Furthermore, Article V, section 32 of the Colorado Constitution prohibits the legislature from including substantive

legislation in the Long Bill. *Owens*, 136 P.3d at 266; *Anderson*, 579 P.2d at 624; *Lamm II*, 704 P.2d at 1382.

Five footnotes, however, violate Article III and/or Article V of the Colorado Constitution, as well as certain provisions of House Bill 08-1321. Because the executive branch cannot abide by legislative directives that are in violation of the Colorado Constitution, I have vetoed the following footnotes:

FOOTNOTES

1. **Footnote 7, page 39: Department of Education, Library Programs, Reading Services for the Blind** – This appropriation is for the support of privately operated reading services for the blind, as authorized by Section 24-90-105.5, C.R.S. It is the intent of the General Assembly that \$200,000 of this appropriation be used to provide access to radio and television broadcasts of locally published and produced materials and \$50,000 of this appropriation be used to provide telephone access to digital transmissions of nationally published and produced materials.

I am vetoing this footnote but directing the Department to comply to the extent feasible. By requesting that a portion of the appropriation be used to support a privately operated reading program for the blind, this footnote goes beyond simply expressing legislative intent and violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation and runs a foul of House Bill 08-1321. I will, however, direct the Department to comply to the extent feasible.

2. **Footnote 18, page 75: Department of Higher Education, Governing Boards, Trustees of Adams State College; Trustees of Mesa State College; Trustees of Metropolitan State College of Denver; Trustees of Western State College; Trustees of Fort Lewis College; regents of the University of Colorado; Trustees of the Colorado School of Mines; University of Colorado; Board of Governors of the Colorado State University System; State Board for Community Colleges and Occupational Education State System of Community Colleges** - It is the intent of the General Assembly that any effective increase in the resident undergraduate tuition rate not exceed 9.0 percent per student or 9.0 percent per credit hour at Adams State College; Mesa State College; Metropolitan State College of Denver; Western State College; Fort Lewis College; the Colorado School of Mines; the University of Colorado System; the Colorado State University System; and the Colorado Community College institutions. In the event that after reductions in funding from the Reappropriated Funds from the College Opportunity Fund stipends, fee-for-service dollars to these institutions of higher education exceeds 9.0 percent of the Reappropriated Funds from the College Opportunity Fund stipends and fee-for-service dollars amount in HB 08-1375, the institutions of higher education shall be allowed to increase tuition above the 9.0 percent

limit up to the amount necessary to backfill the loss of funds, subject to the approval of the institution's respective governing board. It is the intent of the General Assembly that any increases in spending authority necessary to cover the backfill of lost Reappropriated Funds will be addressed through a supplemental in the 2010 session. It is the intent of the General Assembly that the institutions may increase all graduate and nonresident tuition rates to reflect market conditions and that any additional spending authority necessary to cover graduate and nonresident tuition rate increase will be addressed through a supplemental appropriation during the 2010 session.

I am vetoing this footnote and directing the Department and Governing Boards not to comply. By authorizing higher education institutions and their governing boards to raise tuition by more than 9% if certain conditions are met, the footnote goes beyond simply expressing legislative intent and violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriations and runs afoul of House Bill 08-1321. Moreover, I am vetoing this footnote because it fails to account for funding from the State Fiscal Stabilization Funds that the Governing Boards are to receive in FY 2009-10. When accounting for the State Fiscal Stabilization Funds, the Governing Boards are at their respective funding levels from the College Opportunity Fund in House Bill 08-1375. Since these funds are not accounted for in the footnote, the Governing Boards would be able to adjust tuition rates to bring in their relative shortfall from funding through the College Opportunity Fund between House Bill 08-1375 and Senate Bill 09-259, far in excess of 9% tuition rates.

Increasing tuition above this 9% level has the potential to violate the provisions in the American Recovery and Reinvestment Act of 2009 ("ARRA"), Section XIV, which provides that recipients of these funds are instructed to "mitigate tuition increases." Additionally, increasing tuition above this 9% level raises serious access and affordability concerns for the students and families of those attending colleges. Whenever there are tuition increases the affordability of college becomes more challenging and access is, in turn, limited to those who have the ability to pay for college at a higher cost. This footnote does not consider the provisions in the ARRA nor does it account for the impact that the tuition increases it authorizes would have on access to and the affordability of higher education. Therefore, I request the Governing Boards maintain a 9% per student and per credit hour cap on resident undergraduate tuition growth, as the tuition cash funds spending authority identified in Senate Bill 09-259 has been calculated to this level. Additionally, consistent with what we have done for the past two years and as a matter of principle and policy, I strongly urge the Governing Boards to ensure that resident undergraduate students with documented financial need (i.e., level 1 and 2) receive sufficient financial aid to limit their effective tuition rate increases to 5%.

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3. **Footnote 25, page 105: Department of Human Services, Division of Child Care, Child Care Assistance Program Automated System Replacement** — It is the intent of the General Assembly that this project: 1) have a steering committee that includes a county commissioner, a county human services director, and a user of the system; 2) that the Department pilot the program before rolling it out; 3) that the steering committee, including the county representatives, should decide whether the system is "go" or "no go" at the roll out stages; and 4) that ongoing costs for maintenance and administration of this system be covered through savings in or reductions to the Colorado Child Care Assistance Program and remaining Child Care Development Fund reserves. The new system will not drive additional costs to the state General Fund.

I am vetoing this footnote and directing the Department to comply to the extent feasible. By detailing the membership of the steering committee, requesting a pilot program be conducted, vesting the "go" or "no go" decision in the steering committee, and specifying the manner in which maintenance and administration costs be covered, this footnote goes well beyond simply expressing legislative intent and violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation and runs afoul of House Bill 08-1321 by requesting that certain administrative action be taken in connection with an appropriation. I will, however, ask the Department to consider the General Assembly's suggestions during the implementation of this project.

4. **Footnote 47, page 200: Department of Public Safety, Division of Criminal Justice, Community Corrections** — It is the intent of the General Assembly that the Division of Criminal Justice review its allocations of community corrections funding to judicial districts on a monthly basis to determine the utilization of community corrections beds. It is further the intent of the General Assembly that the Division of Criminal Justice adjust its allocations to judicial districts monthly based on the review of utilization rates, and when appropriate, re-allocate funding to allow maximum use of community corrections beds.

I am vetoing this footnote but directing the Department to comply to the extent feasible. By requesting that the Division of Criminal Justice review its allocations of community corrections funding to judicial districts on a monthly basis the footnote goes beyond simply expressing legislative intent and violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriations and runs afoul of House Bill 08-1321. I will, however, direct the Department to comply to the extent feasible.

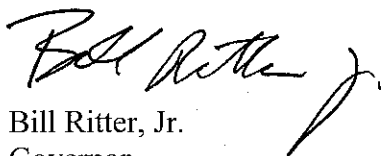
5. **Footnote 48, page 200: Department of Public Safety, Division of Criminal Justice, Community Corrections** — It is the intent of the General Assembly that the appropriations for transition and diversion community corrections beds first restore reductions made in FY 2008-09 for intensive residential treatment community corrections beds. It is further the

intent of the General Assembly that the intensive residential treatment pilot program be designated for the San Luis Valley community corrections facility.

I am vetoing this footnote but directing the Department to comply to the extent feasible. By requesting that the Department restore intensive residential treatment community corrections beds and that these beds be designated for the San Luis Valley community corrections facility, this footnote goes beyond simply expressing legislative intent and violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation and runs a foul of House Bill 08-1321. I will, however, direct the Department to comply to the extent feasible.

For these reasons, I have exercised my power to veto certain portions of Senate Bill 09-259.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Ritter, Jr.", with a stylized flourish at the end.

Bill Ritter, Jr.
Governor